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NO. 84-1236

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

DONALD A. CABANA, SUPERINTENDENT, ET AL.,
Petitioners

vs.

CRAWFORD BULLOCK, JR.,
Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX

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* * *

MOTION TO QUASH INDICTMENT
AND
DECLARE STATUTE UNCONSTITUTIONAL

Comes now the Defendant, Crawford Bullock, Jr., by and through his attorneys and moves the Court to Quash the Indictment returned against Defendant by the Hinds County Grand Jury.

As grounds therefor [sic] Defendant separately and severally states the following:

1.

The statute upon which the indictment is based "Section 97-3-19(2)(e) of the Mississippi Code of 1972, Annotated," (sic) does not "specifically cite a capital

offense "in the indictment returned against the accused by setting forth the section and subsection number of the Code defining the offense alleged to have been committed by the accused."[sic] as required by Miss. Code Ann. Section 99-17-20 (Cum. Supp. 1977), in that

a) The indictment charges, inter alia, a "violation of Section 97-3-19(2)(e) of the Mississippi Code of 1972, Annotated," (sic) when, in fact Miss. Code Ann. Section 97-3-19 (1972) only contains Sub-Sections (a), (b), and (c), and does not contain any subsection "(2)(e)" as stated in the indictment;

b) If, on the other hand, the indictment intended to charge a violation of Section 97-3-19(2)(e) of the Mississippi Code of 1972, as amended and currently codified as Miss. Code Ann. Section

97-3-19(2)(e) (Cum. Supp. 1977) it did not do so

[TR 69] 18

with the specificity required in capital cases by Miss. Code Ann. Section 99-17-20 (Cum. Supp. 1977), thus also violating Defendant's rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States of America and Section 26, Mississippi Constrituion (1890).

c) The indictment fails to set forth "the section and subsection number of the Code defining the offense (of robbery) alleged to have been committed by the accused," an essential element of the capital crime charged, all in violation of the Defendant's rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States of

[TR 70]

America and Section 26, Mississippi Constitution (1890). The indictment's failure in this additional regard is fatally defective in and of itself, particularly in light of the fact that there are several different criminal robbery states in the Mississippi Code.

2.

The statute on which the indictment is based, Miss. Code Ann. Section 97-3-19(2)(e) (Cum. Supp. 1977) is unconstitutional and violative on its face and, particularly as applied in this case, of the Eighth and Fourteenth Amendments to the Constitution of the United States of America in that:

a) The statute inflicts the cruel and unusual punishment of death which is excessive and disporportionate to the offense charge;

[TR 70]

b) The statute inflicts the cruel and unusual punishment of death, as applied, for the unintentional killing of a human being without deliberate design to effect the death of a human being whereas another criminal statute, Miss. Code Ann. Section 97-3-19(1)(a); inflicts a lesser maximum punishment of life imprisonment for the intentional killing of a human being with design to effect the death of the person killed and other criminal statutes, Miss. Code Ann. Section

[TR 70]

97-3-19(b) and (c) inflict a lesser maximum punishment of life imprisonment for virtually the same unintentional killing charged in the instant indictment, all in violation of Equal Protection of the Laws and of the Eighth and Fourteenth Amendments to the United States Constitution, and

[TR 71]

Section 14 of the Mississippi Constitution (1890), and the death penalty is not a deterrant generally or to the acts charged in the indictment;

c) The statute on its face and as applied results in the arbitrary and discriminatory application of the death penalty including, but not limited to, its application, in virtually every case, only when the victim or victims are white and not when the victim or victims are black;

d) The death penalty punishment statutes, Miss. Code Ann. Section 99-19-101 (Cum. Supp. 1977), which must be read in pari materia with the statute of the indictment, Miss. Code Ann. Section 97-3-19(2)(e) (Cum. Supp. 1977), are unconstitutional and violative of the Eighth and Fourteenth Amendments to the United States Constitution in that:

(i) the aggravating circumstances listed are arbitrary and capricious, deny due process and equal protection, are overbroad and vague, are unrelated directly to the capital crime charged and outnumbered the statutorily limited mitigating circumstances, Miss. Code Ann. 99-19-101(5)(a), for example, is vague and unconstitutionally, aribtrarily, and discriminatorily creates an irrebuttable presumption, and denies due process and equal protection of the laws to persons who have been released from incarceration pursuant to authorization of state law but who still technically remain under "a sentence of imprisonment." Subsection (5)(b) suffers the same infirmities. Subsection (5)(h), for

[TR 71]

another example, is overbroad, vague, and necessarily requires arbitrary and capricious application by requiring and

[TR 71]

encouraging subjective value judgments ("heinous," "atrocious," "cruel") without objectively defining or limiting the unconstitutionally unfettered and prejudicial discretion which this subsection grants on its face and as applied.

(ii) The "mitigating circumstances" Subsections Miss. Code Ann. Section 99-19-101(6) (Cum. Supp. 1977) are arbitrarily, capriciously, and, compared to the aggravating circumstances subsection, unequally limited, deny defendants due process and the equal protection of the law,

[TR 72]

and (especially when considered in conjunction with the "aggravating factors" subsection) unconstitutionally shift a fundamentally unfair burden of proof to the Defendant. For example, Subsection (5)(h) ("aggravating") ostensibly allows consideation of various aggravating factors of the actual capital offense in qustion whereas the "mitigating circumstances" Subsection prohibits presentation of counterpart "mitigating circumstances" of the actual capital offense in question.

(iii) The punishment statutes, supra, unconstitutionally fail to allow under any circumstances whatsoever the trial judge either to enter a sentence of life imprisonment

[TR 72]

nothwithstanding a jury's unanimous recommendation of death, or to direct a punishment of life imprisonment without submission of the punishment issue to the jury, all in violation of the Eighth and Fourteenth Amendments to the United States Constitution and of Section 14, Mississippi Constitution (1890).

(iv) Miss. Code Ann. Section 99-19-105 (Cum. Supp. 1977), providing for sentence review by the Supreme Court, is arbitrary and capricious, overbroad and vague, denies due process and equal protection of

[TR 72]

the laws, and is violative of the Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the

[TR 73]

United States of America.

THEREFORE, Defendant respectfully moves the Court to Quash the Indictment and to declare the Statutes attacked, supra, unconstitutional on their face and/or as applied.

Respectfully submitted,

CRAWFORD BULLOCK, JR.

BY: /s/ Don H. Evans
DON H. EVANS
Attorney for Defendant

* * *

* * *

BY THE COURT:

We'll start on State's 2.

BY MR. EVANS:

Number 2 is the State's murder instruction. Is that right?

BY THE COURT:

Yes, sir.

BY MR. EVANS:

All right, to that we are going to object. We object to it first on the grounds that the indictment does not allege regular murder and therefore the defendant cannot be faced with the possible conviction of regular murder.

Number 2, the murder statute, Section 97-3-19 under Section 1 has three sections of situations whereby a person

can be convicted of murder. They are listed as A, B and C. The indictment does not contain allegations that would fit any one of the situations.

Number 3, capital murder is the only murder conviction which the indictment would support and the elements of robbery is not alleged and the indictment would not support this.

Number 4, the instruction does not properly instruct the jury on the elements of murder in that it defines murder under Section 97-3-19A which is the killing of another human being with malice aforethought; however, when it instructs the jury as to what they must believe beyond a reasonable doubt, it leaves out the malice aforethought and other essential elements to the indictment for murder with malice aforethought. Furthermore, it is not a

proper manslaughter instruction in that it eliminates killings that are wrongful or by accident or just killing that justify or otherwise are not unlawful. Because of the aforesaid, the instruction is confusing, it's misleading and is not a true statement of the law.

Number 5, the instruction does not take into account the Weathersby rule whereby the defendant is the only witness.

Number 6, the instruction does not properly instruct the jury as to the burden of proof required by the State and it does not account for the burden required by the State under a circumstantial evidence case and does not require the State to prove the case to the exclusion of every other reasonable hypothesis other than consistent with innocence. The instruction requires the defendant to be found guilty of murder

less than capital which I have never seen stated in this manner before and I don't believe there is any such possible

[TR 1234]

verdict that could be returned and it basically just does not state the law and I would like to do considerable argument on this.

BY THE COURT:

Well, I just need you to state your objections is all I need, Mr. Evans, and I think your main objection, other than the fact that it does not require finding malice aforethought, is that you do not consider murder less than capital murder as being a lesser included offense of capital murder. Is that correct?

BY MR. EVANS:

Your Honor, my position is this.

[TR 1235]

BY THE COURT:

You do not need to restate them all.

BY MR. EVANS:

I am not going to restate them all. Since this is a capital murder case and I am an appointed attorney and we put all these hours into this case getting ready for trial and put all of these days into the trial, I know that this instruction cannot be given on murder. I can show it. It's based on indictments. You have to indict somebody for murder in order to instruct them for murder. I can show it. We have -- everybody knows that murder is a lesser included offense than capital murder if you have a sufficient indictment. The sufficient indictment for murder to be a lesser included offense, capital murder would be that you allege malice aforethought in your indictment. Now, I can show you

cases where they have argued the same point as to whether the indictment is sufficient in recent cases where they could have been found guilty in a

[TR 1235]

violence case of murder and it's got -- (pause).

BY MR. PETERS:

While he is reading that, Your Honor, I would like to amend September the 21st to September the 22nd and, after human being --

BY THE COURT:

(Interposing) Make your own amendments.

BY MR. EVANS:

All right. In the case of --

BY THE COURT:

(Interposing) Mr. Evans, I can read better than I can listen. Let me just read the case.

[TR 1236]

BY MR. EVANS:

I can explain it to you. If you will notice at the bottom of that case, it gives a footnote of the indictment and will show you what kind of indictment that was.

BY THE COURT:

Go ahead.

BY MR. EVANS:

All you have got to do to know that I am right is to think of a murder case. The only time a person can be convicted ofmurder is based upon the indictment. He can't be brought in here charged with a manslaughter and it says a manslaughter indictment -- it says that he unlawfully and feloniously had killed someone and slayed someone and you know that he cannot be found guilty of murder on that charge if that's all you brought him in here on. All right. Then you take a murder indictment, any murder

[TR 1236]

indictment they file here, that would have malice aforethought -- did kill and murder with malice

[TR 1236]

aforethought. By this being a capital murder offense, that is a killing and a robbery. If the jury gets in here and decides that there is not sufficient evidence to prove a robery, then you only could do one thing. You can fall back -- your indictment you can fall back on is your murder indictment and they can find him guilty of murder if you have charged him with murder. They charged him with manslaughter -- not murder. Their indictment -- you can look at it -- is in no way a murder indictment which is legal. Under capital murder, you can go that way. You don't have to go with the murder only and there is absolutely no way that a murder

[TR 1237]

BY MR. EVANS:

Your Honor, I know this is -- I don't know what to say at this point. I know that it's obvious that you cannot give that instruction and we have worked this long at it and this

[TR 1237]

hard at it and we have been appointed and I will make $500.00 at the most and I feel that I should be -- that the Court should take additional time to find out if that instruction should be given or not.

BY THE COURT:

Well, I think that's what I have done, Mr. Evans.

BY MR. EVANS:

Yes, sir, Your Honor, that's true. You have checked it there that few minutes but there is no way that you can come up with a basis for giving that instruction.

[TR 1238]

BY THE COURT:

Well, I consider the basis of at least one year up here, Mr. Evans.

BY MR. EVANS:

Of what now?

BY THE COURT:

I consider that the fact that I have been up here for one year a basis for me ruling on the instructions. Now, if you have some more argument, let's present it.

BY MR. EVANS:

Well, let me see if I understand it right. You are saying that, if the jury found the defendant did not commit the robbery, that they could find him guilty of murder -- under the malice aforethough murder under this indictment. Is that right?

BY THE COURT:

Yes, sir. Isn't that what the Biles case states, Mr. Evans?

[TR 1238]

BY MR. EVANS:

No, sir, the Biles case doesn't state that.

BY THE COURT:

What about the Rogers case?

BY MR. EVANS:

I am not sure.

BY MR. PETERS:

The Jackson case, Your Honor.

BY MR. EVANS:

Your Honor, you cannot show me any law -- neither one of you can show me any law that says that this indictment can support a murder conviction. It's a lesser included offense on a properly instructed case -- a properly indicted case, Your Honor.

BY THE COURT:

Okay. If the instruction can be amended to properly include all of the elements of the charge of murder less than capital, it will be given.

[TR 1239]

BY MR. EVANS:

But, Your Honor, he cannot. You cannot charge -- you cannot instruct to something th. 's not in the indictment. He has never been charged with malice aforethough in this indictment so how are we going to let him do an instruction on malice aforethought? How can I prepare a defense to this indictment? This indictment obviously won't support a murder conviction and I just can't see any basis for how the Court can reach this decision at this time knowing that the case would have to be retried. You know, we have been up here all this time and I think it's obvious here and I have gone through all this work

[TR 1239]

and I hate to see it be brushed by at this time when I know that it will be reversed.

[TR 1240]

BY THE COURT:

Well, I will not brush it aside, Mr. Evans. I want to hear from you.

BY MR. EVANS:

All right. My argument then is the same -- that there is no indictment here that will support a murder conviction. He has not charged in his indictment malice aforethough in the indictment. In a murder indictment that would support a malice aforethought murder conviction would have to contain it in the indictment. It's just like the case I reversed up there at the Supreme Court, and you are familiar with it. If that little difference would reverse a case like that -- the indictment is one of the most important things that you can have. The indictment is what a man is charged with -- he faces his livelihood on it where he may go to the pen for the rest of his life.

[TR 1240]

If the indictment does not say what he is charged with, he has a right to rely on what this indictment charges. This indictment says that he has a manslaughter-robbery and, if he cannot rely on that -- if he's just gonna come in here at a later date -- if the State can do this, then it is obvious that the State -- all you've got to do is see that is cannot be done. If at any time the State wanted to get a murder case when all they've got is a manslaughter case -- when they know somebody has killed somebody out here and they know they don't have enough evidence to prove malice aforethought, they know they can't prove that, well all they gave to do in order to get their murder conviction is to charge them with having

[TR ' '0]

tried robbing that guy, knowing that they

[TR 1241]

can't offer one ism of testimony to back that. The jury will go back there and say: "No, there wasn't any robbery", then they can throw the murder -- then they will say: "We won't do it on capital murder. We'll just do a lesser offense", and that would obviously -- it would be the easiest thing in the world for the District Attorney to do at the time in order to convict someone of murder when they couldn't do it on manslaughter. They would always charge him with capital murder. That's one clear example that would show to you that this instruction cannot be given. The State's instruction for murder in this indictment cannot be -- it's just not legal. It cannot be given on this because of the reasons that I stated and the reason I am arguing so hard here is that we have gone so far and I know I am right and I just hate to see me get

shot down here. I know the District Attorney wants to win the case but I think the reason I am explaining so hard is I think maybe you haven't seen what I am talking about and I believe if you really look into it and study that aspect you will see that I am right. I know that I can sit here and wait for a reversal but I am appointed, nobody has got any money involved in this case, and to go all the way to the Supreme Court and then they come back and convict him of murder, then I've really got to go through all of that and I am still appointed. Now, this is a long trial and I think that it would be an absolute waste of all of what we have gone through to allow an instruction to go in here that I know just cannot stand. Certainly the District Attorney is going to argue that it can but he can't back it. He can't show you one

case. All he can show you is that murder

[TR 1241]

is a lesser included offense than capital murder and I don't think anybody disputes that. We know that. It's what the indictment says. If you are charged, just like in that case, of willful and malice aforethought, did kill and murder so and so while in the commission of kidnapping or while in the commission of robbery, he could have done it. That was his fault. That was his error and I shouldn't have to suffer his mixup.

BY THE COURT:

Do you have a copy of the indictment in the Jackson case? Is it referred to anywhere in the opinion?

BY MR. PETERS:

I am not sure, Your Honor.

[TR 1242]

BY MR. EVANS:

Your Honor, I would like to ask that we get it. We can probably come up with it.

BY MR. PETERS:

I've got the decision.

BY THE COURT:

Well, let's see if it mentioned the indictment.

(Off the record)

BY THE COURT:

I apologize. I see your point.

BY MR. PETERS:

It doesn't say what the indictment alleges that I can find; however, this is what the Court said so that we can all hear it and won't have to all read it. Under paragraph D under 13 -- may the jury in a death penalty case be instructed as to the possibility of their finding the accused guilty of a lesser

[TR 1242]

included offense? Directly related to the constitutional issues involved in this case is the question of whether the Court can instruct the jury as to their right to convict an accused of a lesser included offense of a capital crime when such conviction is warranted by the evidence -- that's all it says -- warranted by the evidence. Such an instruction when warranted by the evidence is desirable in order to facilitate the orderly and efficient administration of justice so as many issues as practical can be disposed of in the trial of a given case. Prohibiting the Court to instruct as to the lesser included offense could result in needless retrials should the jury be unable to agree on its verdict with regard to the capital offense charged. The already overburdened judicial system cannot aford such a waste of

time and energies. Such a procedures not only constitutes an impediment to a full, complete and efficient administration of justice but it creates additional financial and emotional hardship upon the accused persor and his family by delaying the final determination of his case.

BY THE COURT:

That still doesn't answer the question of where there is a failure to allege that the killing was with malice aforethought.

BY MR. PETERS:

The only thing that I can offer in the alternative is, as you know, the indictment for a capital case is with or without intent to kill. If you allege in the indictment that they committed the robbery with or without the intent to kill, then you are putting him in an alternative

[TR 1243]

indicted position. That

[TR 1243]

is, you are increasing your degree of proof on capital murder if you say he killed him with intent whereas you dont' have to prove that. All you have to prove is that he killed him without intent, then you are prohibited of ever finding him guilty of murder and I suggest that the Supreme Court would never put any Grand Jury or District Attorney in that position. That would truly be an impediment to justice and the third position is that, if you indict someone for capital murder and they find him not guilty of capital murder, then the jury is thrown into the position of -- "Well, all we've got left is manslaughter" and so they find him guilty of manslaughter and the person actually is guilty of murder and that certainly wouldn't be justice, so in my

[TR 1244]

opinion, in reading the Jackson case, the only way you can have a judicial determination of capital murder with a lesser degree of proof is to indict without malice -- without intent -- to let the jury then determine whether or not there was or was not intent for a lesser included offense based on the evidence that they say in the Jackson case and then, if they find that there was not intent, then they can find him guilty of manslaughter. All three issues are then determined at that one trial based on the evidence as stated in the Jackson case.

BY THE COURT:

Anything else, Mr. Davis?

BY MR. DAVIS:

No, Your Honor.

BY MR. PETERS:

I will say this, I would be perfectly willing to give

[TR 1244]

This jury the alternative of finding this man guilty of manslaughter or capital murder because I think there is no doubt that he can be convicted of capital murder. If that's the position the defendant wants and if that's what he's moving for and will not raise it on appeal that the Court didn't give a lesser included offense instruction, I am perfectly willing to give them the alternative. Do you want to give him a simple manslaughter or do you want to give him murder or do you want to turn him loose?

BY MR. EVANS:

Your Honor, I think we have to go by what the indictment says. I don't have any alternative but I could not stipulate to that.

BY THE COURT:

You don't think a manslaughter charge is stated in the indictment?

[TR 1245]

BY MR. EVANS:

I think manslaughter is a lesser included offense in this indictment and so it can be given. A manslaughter instruction can be given on this indictment.

BY MR. PETERS:

Your Honor, --

BY THE COURT:

Just a minute, Mr. Peters. Are you asking -- I am asking do you have an instruction -- do you have an objection to State's instruction number 5?

BY MR. EVANS:

Let me look.

[TR 1245]

(Off the record)

BY THE COURT:

It's a manslaughter instruction.

BY MR. EVANS:

I don't have any objection to the manslaughter instruction at the time.

[TR 1246]

BY THE COURT:

What?

BY MR. EVANS:

I have no objection to the manslaughter instruction, Your Honor.

BY THE COURT:

State's instruction number 2 will be refused.

BY MR. PETERS:

And is it your position, Your Honor, -- I take it that it's the defendant's position that no instruction on murder can be given by the Court at this time.

BY THE COURT:

That's right.

BY MR. EVANS:

That's my position.

[TR 1246]

* * *

INSTRUCTION NO. D-12

The Court instructs the Jury that circumstantial evidence has been received in every age of common law, and may arise so high in the scale of belief as to generate full and complete conviction beyond a reasonable doubt of the Defendant's guilt, providing it excludes every other reasonable hypothesis other than that of guilt; and if the Jury does not believe that in this case it does arise so high in the scale of belief as to generate full and complete conviction of Defendant's guilt beyond a reasonable doubt and that it does not exclude every other reasonable hypothesis than that of the guilt of the Defendant in the minds of the Jury, then you are not authorized to act upon it and are required under the law to find the Defendant "Not Guilty."

Refused

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1386]

* * *

INSTRUCTION NO. D-10

The Court instructs the Jury that if the evidence in the case leaves it indifferent which of several hypothesis arising and growing out of the evidence in the case is true, or merely establishes some finite probability in favor of the hypothesis of guilt, rather than another, such evidence cannot amount to legal proof of guilt, however great the probability may be.

Refused

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By: B.D. D.C.

[TR 1387]

* * *

INSTRUCTION NO. D-18

The Court instructs the Jury that you are required under the law to accept the Defendant's version of the facts regarding this case as true, if his version is reasonable, and if it has not been substantially contradicted in material particulars by a credible witness or witnesses for the State, or by the physical facts or by the facts of common knowledge.

Refused

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1388]

* * *

INSTRUCTION NO. D-19

The Court instructs the Jury that you are the sole judges of the facts in this case. Your exclusive province is to determine what weight and what creditability will be assigned the testimony and supporting evidence of each witness in this case. You are required and expected to use your good common sense and sound judgment in considering and weighing the testimony of each witness who has testified in this case.

The Court further instructs you that you may consider the statement given by Crawford Bullock, Jr. in the light of the

[TR 1389]

manner by which you found it was obtained and give it such weight and creditability as you think it is entitled. Unless you believe from the evidence beyond a reasonable doubt that the statement made by the Defendant, was truthful, was accurately repeated or recorded, the Defendant understood what was said, and that such statement was made by the Defendant of his own free will and was not coerced, extorted, or induced by threat of harm or proimise of benefit, you must disregard the statement to the extent that these facts tend to discredit it.

Refused

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B.D. D. C.

[TR 1389]

* * *

JURY INSTRUCTION NO. S-2

The Court instructs the Jury that murder is the killing of a human being with malice, aforethough and without the authority of law, by any means or by any manner, when done with the premeditated and deliberate design to effect the death of the person killed. The Court further instructs you that if you believe from the evidence in this case, beyond a reasonable doubt, that Crawford Bullock, Jr., on or about September 22, 1978, in the First Judicial District of Hinds County, Mississippi killed Mark Dickson, a human being, as stated above, and not in necessary self defense, then he is guilty of murder, and it is your sworn duty

[TR 1390]

to so find; and in that event, the form of your verdict shall be:

"We, the Jury, find the defendant guilty or murder less than capital."

Your verdict shall be written on a separate sheet of paper.

Refused

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1390]

* * *

INSTRUCTION NO. D 1

The Court instructs the Jury to find the Defendant "Not Guilty."

Refused
W.F.C.
Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By Barbara Dunn, D.C.

[TR 1391]

* * *

INSTRUCTION NO. D--8

The Court instructs the Jury that it is the duty of each member of the Jury to make up his verdict separately as to the guilt or innocence of the Defendant, and, unless each individual member of the Jury is satisfied, beyond all reasonable doubt, such Jurors ought not to find the Defendant guilty. In otherwords, as long as any single Juror on the panel entertains a reasonable doubt as to the guilt of the Defendant, after a fair and honest conference with his fellow Jurors, it is the duty of such Juror on his oath to vote "Not Guilty" and never yield his convictions simply because every other man on the Jury

[TR 1392] D-8

may differ with him, for each Juror is along responsible to his own conscience in making up his verdict.

Refused

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1392]

* * *

INSTRUCTION NO. D-9

The Court instructs the Jury that he is a competent witness in his own behalf, and it is the duty of the Jury to consider his testimony, just as it does the testimony of any other witness in this case; and, if from his testimony in connection with the testimony of others, or his testimony alone, there arises a reasonable doubt of his guilt, then he is, in the eyes of the law, innocent of the crime charged and the Jury shall find him "Not Guilty."

Refused
Filed May 18, 1979
Wm. E. "Bill" McKinely
Circuit Clerk
By B. D. D.C.

[TR 1393] D-9

* * *

INSTRUCTION NO. D-31

The Court instructs the Jury that there is nothing which would suggest that the decision to afford an individual defendant mercy violates the Constitution.

Refused
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1394]

* * *

INSTRUCTION NO. D-30

The Court instructs the Jury that you need not find any mitigating circumstances in order to return a sentence of life imprisonment. A life sentence may be returned regardless of the evidence.

Refused
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1395]

* * *

INSTRUCTION NO. D--33

The Court instructs the Jury that in your deliberations on the question of punishment, you are to presume that if you sentence the Defendant to life imprisonment, that the Defendant will spend the rest of his life in prison, and you are to presume that if you sentence the Defendant to death that he will receive a lethal gas until he is dead. You are to make no other presumptions.

Refused

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1396]

* * *

INSTRUCTION NO. D-35

The Court instructs the Jury that in the absence of a conspiracy by Crawford Bullock, Jr. to commit or attempt to commit the crime of robbery of Mark Dickson, the mere presence of Crawford Bullock, Jr. is not sufficient to convict him of robbery even though you may believe that Crawford Bullock, Jr. may have approved of the robbery.

And the Court further instructs the Jury that in the absence of a conspiracy by Crawford Bullock, Jr. to commit or attempt to commit a homicide of Mark Dickson, the mere presence of Crawford Bullock, Jr. is not sufficient to convict him of the

[TR 1397]

homicide of Mark Dickson even though he may have approved of the homicide.

Refused

Filed May 21, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By Peggy Wilson, D.C.

[TR 1397]

* * *

INSTRUCTION NO. D-36

The Court instructs the Jury that in the absence of a conspiracy by Crawford Bullock, Jr. to commit or attempt to commit the crime of robbery of Mark Dickson, the mere presence of Crawford Bullock, Jr. is not sufficient to convict him of robbery even though you may believe that Crawford Bullock, Jr. may have approved of the robbery.

Therefore, the Court instructs you that in order for you to find Crawford Bullock, Jr. guilty of robbery, the State must prove to you beyond a reasonable doubt each of the following essential elements:

[TR 1398]

1. That Crawford Bullock, Jr. had a feloniously intent to rob and take away the personal property of Mark Dickson prior to Mark Dickson's death or that he aided and abetted Rickey Tucker who had a feloniously intent to rob and take away the personal property of Mark Dickson prior to Mark Dickson's death and that Crawford Bullock, Jr. was aware of Rickey Tucker's feloniously intent to rob and take away the personal property of Mark Dickson prior to Mark Dickson's death.

2. That Crawford Bullock, Jr. did in fact use force or put Mark Dickson in fear of some immediate injury to his person as a means of obtaining the personal property of Mark Dickson or that Crawford Bullock, Jr. aided and abetted Rickey Tucker in using force or in putting Mark Dickson in fear of

[TR 1398]

some immediate injury to his person as a means of obtaining the personal property of Mark Dickson and that Crawford Bullock,

[TR 1398]

Jr. knew at the time he aided or abetted Rickey Tucker, that Rickey Tucker was using force or putting Mark Dickson in fear of some imediate injury to his person as a means of obtaining the personal property of Mark Dickson.

3. That by Crawford Bullock, Jr. using the force or putting Mark Dickson in fear, Crawford Bullock, Jr. was able to take and carry away the personal property of Mark Dickson from his person or his presence and against his will, or that by Rickey Tucker using the force or putting Mark Dickson in fear Rickey Tucker was able to take and carry away the personal property of Mark Dickson from his person or his presence and

[TR 1399]

against his will and that Crawford Bullock, Jr. aided or abetted Rickey Tucker in doing so well knowing that Rickey Tucker had the intention of robbing Mark Dickson.

The Court instructs you that if the State fails to convince you beyond a reasonable doubt from the evidence any one of the three essential elements, then Crawford Bullock, Jr. is not guilty of robbery.

Refused

Filed May 21, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By Peggy Wilson D. C.

* * *

INSTRUCTION NO. D-37

The Court instructs the Jury that in the absence of a conspiracy by Crawford Bullock, Jr. to commit or attempt to commit a homicide of Mark Dickson, the mere presence of Crawford Bullock, Jr. is not sufficient to convict him of the homicide of Mark Dickson even though he may have approved of the homicide. Therefore, the Court instructs you that in order for you to find Crawford Bullock, Jr. guilty of manslaughter, the State must provide to you beyond a reasonable doubt each of the following essential elements:

1. That Crawford Bullock, Jr. did in fact kill Mark Dickson or that he knowingly

[TR 1400]

aided and abetted Rickey Tucker in the killing of Mark Dickson.

2. That such killing or slaying was unlawful and felonious.

3. That neither Crawford Bullock, Jr. nor Rickey Tucker killed Mark Dickson in self defense.

4. That either Crawford Bullock, Jr. or Rickey Tucker did not kill Mark Dickson at a time when they, Crawford Bullock, Jr. and Rickey Tucker, were not the aggressor nor the provoker, and were faced with a sudden combat, without undue advantage being taken, and without any dangerous weapon being used and not done in a cruel or unusual manner.

The Court further instructs you that if the State fails to prove to you any one of the above, beyond a reasonable doubt,

[TR 1400]

then it is your sworn duty to find the Defendant "Not Guilty of Manslaughter."

Refused

Filed May 21, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By Peggy Wilson D. C.

[TR 1400]

* * *

INSTRUCTION NO. D-34

The Court instructs the Jury that the State must prove to you beyond a reasonable doubt that Crawford Bullock, Jr. had the feloniously intent to rob or take away the personal property of Mark Dickson against his will by violence to his person or by putting him in fear of some immediate injury to his person prior to Mark Dickson's death or he is not guilty of robbery and you must find him not guilty of capital murder.

Refused

Filed May 21, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By Peggy Wilson D.C.

[TR 1401]

* * *

JURY INSTRUCTION NO. 1

Members of the jury, you have heard all of the testimony and received the evidence and will shortly hear arguments of counsel. The court will presently instruct you as to the rules of law which you will use and apply to this evidence in reaching your verdict. When you took your places in the jury box, you made an oath that you would follow and apply these rules of law to the evidence in reaching your verdict in this case. it is, therefore, your duty as jurors to follow the law which I shall now state to you. <u>You are not to be concerned with the wisdom of any rule of law</u>. Regardless of any opinion you may have as to

[TR 1402]

what law ought to be, it would be a violation of your sworn duty to base your verdict upon any other view of the law than that given in these instructions by the court.

It is your exclusive province to determine the facts in this case and to consider and weigh the evidence for that purpose. The authority thus vested in you is not an aribtrary power but must be exercised with sincere judgment, sound discretion and in accordance with the rules of law stated to you by the court.

Both the State of Mississippi and the defendant have a right to expect that you will conscientiously consider and weigh the evidence and apply the law of the case.

It is your duty to determine the facts and to determine them from the evidence produced in open court. You are to

[TR 1402]

apply the law to the facts and in this way decide the case. You should not be influenced by bias, sympathy or prejudice. Your verdict should be based on the evidence and not upon speculation, guesswork or conjecture.

[TR 1402]

You are required and expected to use your good common senses and sound honest judgment in considering and weighing the testimony of each witness who has testified in this case.

The evidence which you are to consider consists of the testimony and statements of the witnesses and the exhibits offered and received. You are also permitted to draw such reasonable inferences from the evidence as seems justified in the light of your own experience.

Arguments, statements and remarks of counsel are intended to help you understand the evidence and apply the law, but are not evidence. If any argument, statement or remark has no basis in the evidence, then you should disregard that argument, statement or remark.

The production of evidence in court is governed by rules of law. From time to time during the trial, it has been my duty as judge to rule on the admissibility of evidence. You must not concern yourself with the reasons for the court's rulings since they are controlled and governed by rules of law. You should not infer from any rulings by the court on these motions or objections to the evidence that the court has any opinion on the merits favoring one side or another. You should not speculate

[TR 1403]

as to possible answers to questions which the court did not require to be answered. Further, you should not draw any inference from the content of these questions. You are to disregard all evidence which was excluded by the court from consideration during the course of the trial.

If in stating the law to you I repeat any rule, direction or idea, or if I state the same in varying ways, no emphasis is intended and you must not draw any inference therefrom. The order in which these instructions are given has no significance as to their relative importance.

Given

[TR 1403]

* * *

INSTRUCTION NO. 2

The Court instructs the Jury that the mere fact that this Defendant has been indicted creates no presumption of guilt against him, and the law presumes the Defendant in this case, notwithstanding the indictment, to be innocent until his guilt is proven beyond every reasonable doubt.

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1404] D-4

* * *

INSTRUCTION NO. 3

The Court instructs the Jury that no person should be convicted upon his reputation, character, or former conviction, but must be convicted by the evidence in this case; and the evidence must exlcude any and every reasonable doubt.

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1405] D-3

* * *

JURY INSTRUCTION NO. 4

The law presumes every person charged with the commission of a crime to be innocent. This presumption places upon the State the burden of proving the Defendant guilty of every material element of the crime with which he is charged. Before you can return a verdict of guilty, the State must prove to your satisfaction beyond a reasonable doubt that the Defendant is guilty. The presumption of innocence attends the Defendant throughout the trial and prevails at its close unless overcome by evidence which satisfies the Jury of his guilt beyond a reasonable doubt. The Defendant is not required to prove his innocence.

Given

[TR 1406] C-2

* * *

INSTRUCTION NO. 5

The Court instructs the Jury that the law starts out with the presumption that the Defendant is entirely innocent of the crime charged against him, and every part and parcel of it; and that this presumption accompanies the Defendant throughout every step and stage of the trial, and is in itself sufficient to find the Defendant "Not Guilty" unless it has been broken down and overcome by competent and credible testimony, satisfying the minds and consciences of the Jury of the guilt of the Defendant, beyond every reasonable doubt. It is not sufficient for the Jury to believe that the Defendant is probably guilty, nor

[TR 1407]

will a mere preponderant testimony justify a conviction, but the Jury must be satified from the evidence, beyond a reasonable doubt, that the Defendant is guilty before you can convict.

Given

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1407] D-5

* * *

INSTRUCTION NO. 6

The Court charges the Jury that it is as much the sworn duty of the Jurors to acquit the innocent as it is to convict the guilty; and under the law of the State of Mississippi, all persons are presumed to be innocent until proven guilty so conclusively as to remove every reasonable doubt. Furthermore, the Court instructs you that the doctrine of "reasonable doubt" is just as much the law as any other constitutional or legal principle; and if, in the minds of the Jury such reasonable doubt of the Defendant's guilt exists in

[TR 1408]

this cause arising out of the evidence, the Court instructs and directs you to acquit the Defendant.

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1408] D-7

* * *

INSTRUCTION NO. 7

The Court instructs the Jury that you are bound in deliberation upon this case to give the Defendant the benefit of every reasonable doubt of his guilt that arises out of the evidence or want of evidence in this case. There is always a reasonable doubt of his guilt when the evidence simply makes it probable that he is guilty. Mere probability of guilt, however strong, will never warrant you in convicting the Defendant. It is only when, on the whole evidence, you are able to say, on your oaths, beyond every reasonable doubt, that he is guilty that the law will permit you to find him guilty. You might be able to say

[TR 1409]

that you believe him guilty, and yet, if you are not able to say on your oaths, beyond every reasonable doubt, that he is guilty, it is your sworn duty by your verdict to say "Not Guilty."

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1409] D-6

* * *

INSTRUCTION NO. 8

The Court instructs the Jury that in passing upon the action of the accused the Jury should not try him by the light of after developed events, nor hold him to the same cool and correct judgement which you are able to form. You should put yourselves in his place, and judge of his act by the facts and circumstances by which he was surrounded.

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B.D. D.C.

[TR 1410] D-16

* * *

INSTRUCTION NO. 9

The Court instructs the Jury that since the Defendant is the only eyewitness to the homicide which testified in this trial, you are required under the law to accept his version as true, if his version is reasonable, and if it has not been substantially contradicted in material particulars by a credible witnesses for the State, or by the physical facts or by the facts of common knowledge.

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1411] D-21

* * *

INSTRUCTION NO. 10

The Court instructs the Jury that if there be any material facts or circumstances in this case susceptible of two reasonable interpretations, one favorable and the other unfavorable to the accused, and when the Jury has considreed such facts or circumstances with all the other evidence, there is a reasonable doubt as to the correct interpretation, you must resolve such doubt in favor of the accused and place upon such facts or circumstances the interpretation, favorable to the accused.

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1412]

* * *

INSTRUCTION NO. 11

The Court instructs the Jury that if you believe from the evidence offered in this trial, that Crawford Bullock, Jr., at the time of the giving of his statement to the law enforcement officials, was suffering extreme pain and was experiencing a high fever and was in urgent need of medical treatment and that if you further believe that he was told or led to believe by the law enforcement officials that he could only receive medical treatment if he gave a written statement to the law enforcement officials and if you further believe that Crawford Bullock, Jr. gave the statement at

[TR 1413]

a time when he was not in the proper mental or physical state to properly read and study the contents of the statements so as to ascertain if it was accurately repeated or recorded, then you may consider the statement in the light of the manner by which you found it was obtained and give it such weight and creditability as you think it is entitled.

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1413] D-20

* * *

INSTRUCTION NO. 12

The Court charges the Jury that under the law each and every Juror must agree upon a verdict as the verdict of the Jury. In otherwords, all twelve of the Jurors must agree upon the verdict in this case.

Given

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1414] D-14

* * *

JURY INSTRUCTION NO. 13

The verdict of the jury must represent the considered judgment of each juror. In order to return a verdict it will be necessary that each juror agree thereto. In other words, all twelve jurors must agree on a verdict in this case. It is your duty as jurors to consult with one another and to deliberate in view of reaching an agreement if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations do not hesitate to reexamine your own views and change your

[TR 1415]

opinion if convinced it is erroneous, but do not surrender your honest convictions as to the weight or effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

Given

[TR 1415] C.3

* * *

INSTRUCTION NO. 14

The Court instructs the Jury that every person who shall feloniously take the personal property of another in his presence or from his person and against his will by violence to his person or by putting such person in fear of some immediate injury to his person, shall be guilty of robbery.

The Court further instructs the Jury that there are three essential elements to the crime of robbery and that the State must prove each of these essential elements to you beyond a reasonable doubt. The three essential elements of robbery are:

1. Felonious intent.
2. Force or putting in fear as a

[TR 1416]

means of effectuating the intent.

3. And by that means taking and carry away the property of another from his person or in his presence and against his will.

The Court further instructs you that all three of these essential elements must concur in point of time.

The Court instructs you that "feloniously" means "the deliberate intention of committing a crime."

Therefore the Court instructs you that the State must prove to you by the evidence beyond a reasonable doubt each of the following essential elements:

1.

That Crawford Bullock, Jr. had a felonious intent to rob and take away the personal property of Mark Dickson prior to Mark Dickson's death.

[TR 1416]

2.

That Crawford Bullock, Jr. did in fact use force or put Mark Dickson in fear of some immediate injury to his person as a means of obtaining the personal property of Mark Dickson.

3.

That by Crawford Bullock, Jr. using the force or putting Mark Dickson in fear, Crawford Bullock, Jr. was able to take and carry away the personal property of Mark Dickson from his person or his presence and against his will.

The Court instructs you that if the State fails to convince you beyond a reasonable doubt from the evidence any one

[TR 1417]

of the three essential elements, then Crawford Bullock, Jr. is not guilty of robbery.

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1417]

* * *

JURY INSTRUCTION NO. 15

The Court instructs the Jury that if you believe from the evidence in this case, beyond a reasonable doubt that on September 21, 1978, in the First Judicial District of Hinds County, Mississippi, Crawford Bullock, Jr., was present, consented to , and encouraged the commission of a crime and thereby aided another individual, and that he, the said Crawford Bullock, Jr. or the other, then and there did wilfully, unlawfully and feloniously take and carry away the personal property of another from the presence of Mark Dickson, and from his person, against his will, by violence to his person, to-wit; his billfold

[TR 1418]

or one 1978 Thunderbird automobile then in his possession, then and in that event, the Defendant, Crawford Bullock, Jr. is guilty of robbery as if he had with his own hands committed the whole offense; and, if the Jury further finds from the evidence in this case, beyond a reasonable doubt, that on said date aforesaid, while engaged in the commission of the aforesaid robbery, if any, that the said Crawford Bullock, Jr., did alone, or while acting in consert with another, while present at said time and place by consenting to the killing of the said, Mark Dickson, and that the said Crawford Bullock, Jr., did any overt act which was immediately connected with or leading to its commission, without authority of law, and not in necessary self defense, by any means, in any manner, whether done with or without any design to effect the

[TR 1418]

death of the said Mark Dickson, that the, and in that

[TR 1418]

event, the said Crawford Bullock, Jr., is guilty of capital murder, and the form of your verdict should be in the following form, written on a separate sheet of paper:

"We, the Jury, find the Defendant, Crawford Bullock, Jr., guilty of Capital Murder."

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B.D. D.C.

[TR 1419]

* * *

INSTRUCTION NO. 16

The Court instructs the Jury that in order to find the Defendant guilty of capital murder you must be convinced beyond a reasonable doubt from the evidence that the Defendant is guilty of each of the following:

1. That Crawford Bullock, Jr. did feloniously take or attempt to feloniously take the personal property of Mark Dickson, in his presence or from his person and against his will by violence to his person or by putting Mark Dickson in fear of some immediate injury to his person and

2. That in doing so, Crawford Bullock, Jr., did in fact kill Mark Dickson

[TR 1420]

without malice, without authority of law, and not in necessary self defense.

The Court further instructs you that if the State fails to prove to you any one of the above, beyond a reasonable doubt, then it is your sworn duty to find the Defendant, "Not Guilty."

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1420] D-23

* * *

INSTRUCTION NO. 17

The Court instructs the Jury that manslaughter is the killing of a human being without malice, in the heat of passion, without authority of law, and not in necessary self defense. Therefore, the Court instructs the Jury that before you can find the Defendant guilty of manslaughter, the State must have proven to you beyond a reasonable doubt from the evidence each of the following:

1. That Crawford Bullock, Jr. did in fact kill Mark Dickson.

2. That such killing or slaying was unlawful and felonious.

3. That Crawford Bullock, Jr. did not kill Mark Dickson in necessary self defense.

[TR 1421]

The Court further instructs you that if the State fails to prove to you any one of the above, beyond a reasonable doubt, then it is your sworn duty to find the Defendant "Not Guilty of Manslaughter."

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1421] D-24

* * *

JURY INSTRUCTION NO. 18

The Court instructs the jury that manslaughter is the killing of a human being, in the heat of passion, without malice, in a cruel or unusual manner, without authority of law, and not in necessary self defense; and if the Jury believes, from the evidence in this case, beyond a reasonable doubt, that the defendant, Crawford Bullock, Jr., so killed the deceased, Mark Dickson, then the Jury will find the Defendant guilty of manslaughter.

In that event the form of your verdict will be:

[TR 1422]

We, the Jury, find the Defendant guilty of manslaughter."

You should write your verdict on a separate sheet of paper.

Given

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

S-5 [TR 1422]

* * *

INSTRUCTION NO. 19

The Court charges the Jury that should you find him not guilty, the form of your verdict may be as follows:

"We the Jury, find the Defendant 'Not Guilty'."

Please write your verdict on a separate piece of paper.

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1423] D-2

* * *

JURY INSTRUCTION NO. 20

You have found the defendant guilty of the crime of "Capital Murder." You must now decide whether the Defendant will be sentenced to death or to life imprisonment. In reaching your decision, you must objectively consider the detailed circumstances of the offense for which the Defendant was convicted, and the Defendant himself.

To return the death penalty, you must unanimouly find from the evidence beyond a reasonable doubt that aggravating circumstances - those which tend to justify the death penalty - outweigh mitigating circumstances - those which tend to justify the less severe penalty of life imprisonment.

[TR 1424]

If you unanimously find from the evidence in this case, beyond a reasonable doubt, the following aggravating circumstances:

1. The capital murder was committed while the defendant, either alone or with another, was engaged in the commission of robbery;

2. The capital murder was committed for pecuniary gain;

3. The capital murder was especially heinous, atrocious or cruel;

4. The capital murder was committed for the purpose of avoiding lawful arrest;

then you must proceed to weigh the aggravating circumstances and the mitigating circumstances, one against the other, to determine whether the aggravating circumstances, if any, outweigh the

[TR 1424]

mitigating circumstances.

S-4 [TR 1424]

The mitigating circumstances which you may consider include the following:

1. The defendant has no significant history of criminal activity.

2. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired.

3. The age of the defendant at the time of the crime.

4. Any circumstances or combination of circumstances surrounding the defendant's life and character which reasonably mitigates against imposition of the death penalty.

5. Any circumstances or combination of circumstances surrounding the offense which reasonably mitigates against imposition of the death penalty.

[TR 1425]

6. The offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

7. The defendant was an accomplice in the capital offense committed by another person and his participation was relatively minor.

8. The defendant acted under extreme duress or under the substantial domination of another person.

If you unanimously find from the evidence, beyond a reasonable doubt, any one or more of the aggravating circumstances listed above and, if, after weighing the mitigating circumstances and the aggravating circumstances, one against the other, you further find unanimously from the evidence beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating circumstances and that the death

penalty should be imposed, your verdict shall be written on a separate sheet of paper, shall be signed by your foreman, and shall be in the the following form:

[TR 1425]

"We the Jury, find unanimously and beyond a reasonable doubt the folowing aggravating circumstances:

(List the aggravating circumstances, if any, which you unanimously find beyond a reasonable doubt from those listed above in the same language as they are listed.)

"We, the Jury further find unanimously from the evidence and beyond a reasonable doubt that, after weighing the mitigating circumstances and the aggravating circumstances, one against the other, that the mitigating circumstances do not outweigh

[TR 1426]

the aggravating circumstances and that the defendant should suffer the penalty of death.

_____
FOREMAN OF THE JURY

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B.D. D.C.

S-4 [TR 1424]

If you fail to find any aggravating circumstances unanimously and beyond a reasonable doubt, or, if you find one or more aggravating circumstances unanimously and beyond a reasonable doubt, but after weighing the mitigating circumstances, one against the other, you fail to unanimously find beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating circumstances, then your verdict shall be in the following form:

> "We, the Jury, find that the defendant should be sentenced to imprisonment for life in the state penitentiary."

If, after reasonable deliberation, you cannot agree as to the punishment, you should certify your disagreement to the

[TR 1427]

Court and the Court shall, under the law, impose a sentence of imprisonment for life. Your verdict shall be in the following form:

> "We, the Jury, after due deliberation, have been unable to agree upon the punishment and hereby so certify and request the Court to dismiss the Jury from further deliberation."

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1427]

* * *

JURY INSTRUCTION NO. 21

SENTENCING PHASE

The Court instructs the Jury that in determining whether or not to assess the death penalty in this case, you may consider only those aggravating circumstances set out for you by the Court in these instructions which you unanimously find from the evidence beyond a reasonable doubt. The Court further instructs you that bias, passion, or prejudice, whether based on political, social, racial, religious or any other grounds, may not be the basis for or considered as an aggravating circumstance in this case, nor may they sway you in any

[TR 1428]

manner unfavorable to the defendant in your determination of whether or not to assess the death penalty as punishment.

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By Barbara Dunn D.C.

S-1 [TR 1428]

* * *

INSTRUCTION NO. 22

The Court instructs the Jury that in deciding whether the Defendant, Crawford Bullock, Jr., should be sentenced to death or to life in prison, you must weigh the mitigating circumstances against the aggravating circumstances that you find to be established by the evidence. The fact that you have found Crawford Bullock, Jr. guilty beyond a reasonable doubt of the crime of capital murder is not itself an aggravating circumstance.

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1429] D-26

* * *

INSTRUCTION NO. 23

The Court instructs the Jury that before you consider any fact as an aggravating circumstance, you must find that that fact has been established by the evidence beyond a reasonable doubt. You may not consider any fact as a reason for choosing to impose the death sentence unless you are satisfied beyond a reasonable doubt that that fact is true.

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1430] D-27

* * *

INSTRUCTION NO. 24

The Court instructs the Jury that in order for you to impose the death sentence, you must be convinced beyond a reasonable doubt that the totality of the aggravating circumstances outweigh the totality of the mitigating circumstances. If you are not convinced beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating circumstances, you must return a verdict of life imprisonment.

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1431] D-28

* * *

INSTRUCTION NO. 25

The Court instructs the Jury that in reaching your decision on the question of punishment, you are to weigh the evidence in aggravation and mitigation, but you are cautioned, that in a case such as this, you are not to be influenced by any passion, prejudice or any other arbitrary factor.

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1432] D-29

* * *

INSTRUCTION NO. 26

The Court instructs the Jury that the law requires that in order to impose a sentence of death, you must reach a unanimous decision. In the event you cannot reach a unanimous decision, the Defendant will be sentenced to life imprisonment.

Given
W.F.C.

Filed May 18, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By B. D. D.C.

[TR 1433] D-32

* * *

INSTRUCTION NO. _____

The definition of pecuniary is as follows: "Monetary; relating to money; financial; consisting of money or that which can be valued in money."

Given

Filed May 25, 1979
Wm. E. "Bill" McKinley
Circuit Clerk
By W.F.C. D.C.

[TR 1434]

* * *

BRIEF FOR APPELLANT

* * *

IV.

THE COURT ERRED IN NOT SUSTAINING THE APPELLANT'S MOTION FOR A DIRECTED VERDICT MADE AT THE CLOSE OF ALL THE TESTIMONY, IN NOT GRANTING THE APPELLANT'S PEREMPTORY INSTRUCTION, AND IN NOT GRANTING THE APPELLANT'S MOTION TO REDUCE THE CHARGE TO MANSLAUGHTER MADE AT THE CLOSE OF ALL TESTIMONY AND ALSO, IN NOT GRANTING THE SAME MOTIONS MADE AT THE CLOSE OF THE STATE'S CASE IN CHIEF

In the interest of space and since the same arguments of law anf fact aply to this assignment of error, the Appellant incorporates all of the arguments of fact and law discussed in Error No. 1 and Error No. 3 into this assignment of error and

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makes it a part hereof as if wholly written herein.

The Appellant would further show that all of the essential elements of murder or manslaughter were not proven and that none of the essential elements of robbery were proven. The State was under a duty to prove every essential element of robbery and since the State could not and did not prove any of the essential elements of robbery, the Court was under a duty to direct a verdict of acquittal on the charge of Capital Murder and release the Appellant or to at least reduce the charge to manslaughter since manslaughter ws the only lesser included offense which the Appellant may have been convicted of under the indictment if the State had proven all of the essential elements of manslaughter.

The Court could not just assume that there was a robbery because the Appellant had the automobile. He gave a good and reasonable explanation of why he had the car and as to what happened to the billfold and the explanation was consistent with innocence and was not substantially contradicted in the material particulars by the physical facts or by facts of common knowledge and under the Weathersby Rule the Court was required to accept his version as true.

Furthermore, the State never proved ownership of the automobile or right to possession by Mark Dickson.

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PETITION FOR REHEARING
BY APPELLANT

* * *

5.

That the Court erred in not reversing Appellant's sentence of death, which was imposed upon a person who has not taken or attempted to take a life, nor intended to take a life, especially where the sentencing jury was not instructed to consider those factors in mitigation of punishment.

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APPELLANT'S BRIEF IN SUPPORT OF
PETITION FOR REHEARING

* * *

Point V

THAT THE COURT ERRED IN NOT REVERSING APPELLANT'S SENTENCE OF DEATH, WHICH WAS IMPOSED UPON A PERSON WHO HAS NOT TAKEN OR ATTEMPTED TO TAKE A LIFE, NOR INTENDED TO TAKE A LIFE, ESPECIALLY WHERE THE SENTENCING JURY WAS NOT INSTRUCTED TO CONSIDER THOSE FACTORS IN MITIGATION OF PUNISHMENT.

Appellant's case squarely presents the question reserved by the United States Supreme Court in Lockett v. Ohio, 438 U.S. at 609 n. 16 (1978): whether a sentence of death may constitutionally be imposed on one who has not taken life,

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attempted to take life or intended to take life, under circumstances where the jury charged with imposing punishment is not instructed to consider those factors in mitigation of sentence.

The facts basically establish that this defendant did not participate in the killing of this individual unless it was concluded that the two times that he grabbed this individual was in an effort to assist the Co-Defendant in the killing of the victim. However, there is no evidence to show that this was his purpose. His testimony was that he was attempting to

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break up the fight. There is no evidence that the two defendants planned or created a common scheme to rob the victim. It would seem unlikely that they could have possibly discussed that they were going to rob the victim because they did not know that the victim was going to offer them a ride and the Appellant sat on the front seat and the Co-Defendant sat on the back seat. If there was a robbery attempt, it was created through the mind of the Co-Defendant without the Appellant's involvement. The Appellant's statement given to the police stated that they were not trying to rob the victim. There is nothing in the record to indicate that the Appellant had a expressed desire to take the life of the victim, that he attempted to take the life of the victim or that he did take the life of the victim. On the otherhand, there is uncontradicted evidence that the Co-Defendant did in fact

take the life of the victim. The Appellant was not armed nor was the Co-Defendant armed. The testimony by the Appellant indicates that there was simply a fight between the two youths who had been drinking and got into an argument and that he attempted to separate them. There was no where in the record where it was ever shown that the Appellant deliberately intended to take the life of the victim.

The United States Supreme Court has held that the unique and extreme penalty of death is not per se excessive or disproportionate where the condemned person has deliberately taken another's life. Gregg v. Georgia, 428 U.S. at 187 (1976), but

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that it "is an excessive penalty for the rapist who, as such, does not take human

[-10-]

life," Coker v. Georgia, 433 U.S. 584, 598 (1977). The principle to be derived from these holdings is that it is constitutionally inappropriate for a state to extinguish the life of an offender who has not deliberately extinguished the life of his victim.

The United States Supreme Court has indicated tht the appropriate measure for determining whether a sentence is disproportionate or excessive is whether it comports with the "evolving standards of decency" reflected in contemporary community judgments on the propriety of a particular sentence. Gregg v. Georgia, 408 U.S. at 173, Coker v. Georgia, 433 U.S. at 592. The petitioner in Lockett presented a study of all executions for homicide since 1954 for which facts were available. Lockett v.

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Ohio, supra, Brief for Petitioner, at 66 and App. B; 438 U.S. at 624-5 and n.6 (White, J. concurring). That study indicated that "only eight (out of 363) clearly involved individuals who did not personally commit murder." Id. Two of those eight had hired others to do the killing. Id. at 625 n.7. Two people have been executed since that study was conducted and both of them were the assailants in the offense. The statistics for the State of Mississippi contained in the Lockett study further reflect the community judgment that a person who has not killed should not be put to death; of the people executed since 1954, not a single person was executed for homicide where he was not personally, physically responsible for the death of the victim.

[-10-]

A study of all the cases decided by the Supreme Court of Mississippi since the State's mandatory statute was found unconstitutional reveals that there are only about two people sentenced to death, the Appellant being one of them, without being the actual perpetrator of the homicide. Thus, from either a national or state perspective, Appellant's death sentence is excessive and disproportionate, and its imposition, therefore, violates the Eighth and Fourteenth Amendments to

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the Constitution of the United States.

Furthermore, it is clear that under Justice White's view, a death sentence may not be constitutionally imposed without an express finding "that the defendant engaged in conduct with the conscious purpose of producing death." Lockett v. Ohio, supra

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438 U.S. at 628 (White, J., concurring).

Unless the jury responsible for the sentencing decision is informed that such a finding is necessary, and such a finding appears unambiguously in the record the imposition of a death sentence cannot stand. Where a jury is not instructed at the penalty phase to consider the Appellant's level of culpability or the nature of his mens rea in the offense, and the verdict of guilt is ambiguous as to its findings on these issues, it cannot be maintained that the Eighth Amendment requirement as articulated by Justice White has been met. Therefore, the Appellant's sentence should be reversed.

[-11-]

Point VI

THE COURT ERRED IN NOT REVERSING APPELLANT'S DEATH SENTENCE, WHICH WAS IMPOSED IN VIOLATION OF THE EIGHTH AMENDMENT, SINCE THIS COURT FAILED TO CONDUCT THE "MEANINGFUL APPELLATE REVIEW" REQUIRED BY THE UNITED STATES SUPREME COURT IN GREGG V. GEORGIA, 428 U.S. 153 (1976), BECAUSE THIS COURT DID NOT COMPARE APPELLANT'S CASE TO THOSE WHERE NO DEATH SENTENCE WAS IMPOSED AND FAILED TO COMPARE APPELLANT'S SENTENCE WITH THAT IMPOSED ON HIS CO-DEFENDANT.

The Mississippi Supreme Court in its opinion rendered against the Appellant, cites numerous cases in its effort to suport the fact that the Appellant should receive a death penalty. However, in reading these cases, the Appellant fails to see how the cases cited indicates that the Appellant

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should receive a death sentence. On the otherhand, they indicate that if they were followed, that the Appellant should receive a life sentence. In most all of these cases the accomplice who did not do the killing was given a life sentence or a lesser sentence than death. The Appellant fails to see the Supreme Court's rationale in citing these cases to support the fact that he should receive the death penalty. By comparing the

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cases similar to his, whereby he was not the triggerman, those individuals received a life sentence or a sentence less than life.

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PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF MISSISSIPPI

* * *

IV.

The Mississippi statutes constitute cruel and unsuaul punishment in that, as interpreted by the Supreme Court of Mississippi, an accomplice, although not actually killing any person, and with no intent to kill, may receive the death penalty. Thus, the statutes as applied are in conflict with this Court's opinion in Lockett v. Ohio, 438 U.S. 586, 98 S. Ct. 2954, 57 L. Ed. 2d 973 (1978), wherein this Court held that the Eighth and Fourteenth Amendments forbid imposition of a sentence of death where there is no finding that the defendant acted with the "conscious purpose of producing death." 438 U.S. at p. 628.

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As stated by Justice White:

> . . . the infliction of death upon those who had no intent to bring about the death of the victim is not only grossly out of proportion to the severity of the crime but also fails to contribute significantly to acceptable, or indeed, any perceptible goals of punishment.
>
> 438 U.S. at p. 626.

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